

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

R.S.A.No.820 of 1990

Date of decision : 13.12.2006

Municipal Committee, Jagraon

.....Appellant

Vs.

Satwinder Singh

....Respondent

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

Present : Mr. Lalit Sharma, Advocate
for the appellant.

Mr. Gurcharan Dass, Advocate
for the respondent.

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MAHESH GROVER, J.

The Municipal Committee, Jagraon is in appeal against the judgment of the Additional District Judge, Ludhiana dated 15.11.1989.

Satwinder Singh, plaintiff-respondent filed a suit for mandatory injunction against the appellant Municipal Committee, Jagraon praying for a direction to the latter to remove two shops depicted in red colour in the site plan and raised illegally in the said area in front of the shops belonging to the plaintiff-respondent. It was pleaded by the respondent that he was the owner in possession of the plot measuring 10 marlas out of the land measuring 4 kanals comprised in khewat No.1781, khatauni No.1853, Khasra No.1321/1/2, as per jamabandi for the year 1967-68. On the said plot a shop-cum-dwelling unit was constructed after getting necessary sanction for the site plan from the Municipal Committee. Two shops

were constructed on the site which were stated to be adjacent to the Tehsil Road, Jagraon the width of which is 82'6" from the area of Chowk Khangah to Sabji Mandi Chowk. In the aforesaid area there used to be existing Khokhas for shoe makers and others which were raised illegally and by encroaching the public land with the connivance of the appellant Committee. The Khokhas were 8' in breadth with varying lengths. The Committee took no action to remove the Khokhas from the road. The road in that area was very congested and narrow. In order to ease the traffic the plaintiff-respondent and other similarly situated persons agreed to leave 20' area for the Municipal Committee for the purpose of widening the Tehsil Road and for construction of another road from Khangah Chowk to Sabji Mandi Chowk. They also agreed to forego compensation in lieu of 20' area to facilitate the above stated purpose. The appellant instead of utilising the land for the said purpose entered into an agreement with the occupiers of the Khokhas to construct a market named as Rajiv Market for them and also to widen the area of shops by encroachment upon the Tehsil Road. The market was forcibly constructed and two shops as depicted in red and marked ABCD in the site plan were constructed in front of the property of the plaintiff-respondent. As a result the breadth of the road was considerably reduced. The plaintiff-respondent challenged this action of the Municipal Committee to raise permanent construction and to change the character of the road by constructing a market thereon. It was further pleaded that construction of these shops had diminished the value and utility of the property of the plaintiff-respondent.

The appellant Municipal Committee contested the suit and denied that the width of the road was 82'. It was pleaded that shops had been built on both sides of the road starting from the year 1975 onwards for allotment to those persons who had no shops. The shops were allotted to persons who were earlier operating from their Khokhas which were in existence on both sides of the Tehsil Road from Chowk Mohkem Din to Jewa Building. The shops were built as a replacement of Khokhas with the approval of the government pursuant to 20-Point Programme sponsored by the government. It was further pleaded that there was a 20' wide thoroughfare between the chowk of shops of the Committee and the place where the plaintiff-respondent alleged to have its construction. The construction was sought to be justified on the ground of development and betterment of the public interest. The compromise as pleaded by the plaintiff-respondent was admitted but it was contended that on the strength of this compromise the plaintiff-respondent was estopped by his own conduct to file the present suit. That apart, it was pleaded that shortening of the width of the road was in public interest.

On the pleadings of the parties, the following issues were framed :

1. Whether the plaintiff is entitled to the mandatory injunction prayed for? OPP
2. Whether the plaintiff is estopped by his act and conduct from filing the present suit? OPD
3. Whether the notice served on the defendant is invalid?
OPD

4. Relief.

The trial court on the strength of the evidence before it dismissed the suit of the plaintiff-respondent vide judgment dated 15.5.1986, which resulted in appeal. The appeal was accepted and the findings of the learned trial court were reversed vide judgment dated 15.11.1989. Aggrieved by the aforesaid judgment of the Addl. District Judge, the Municipal Committee has preferred the Regular Second Appeal.

It was contended by the learned counsel for the appellant that an agreement had been entered into between various owners with the appellant wherein they had agreed to leave 20' wide space out of their own ownership for widening the road. The area was utilised for resettling the Khokha owners who had been operating for the last thirty years from that area. Besides, the action was taken in public interest which was paramount and the plaintiff-respondent by his conduct was creating a hindrance in the development scheme.

On the other hand, learned counsel for the respondent contended that the agreement was entered into with the appellant with a specific purpose for the widening of the road and not for narrowing the road which is the result of construction of the shops in front of the property of the respondent. The respondent had also forsaken the right of compensation. The conditions as stipulated in the agreement Ex.DX were specifically referred to in this regard.

I have heard the learned counsel for the parties and have perused the record.

Concededly, an agreement had been entered into between

the appellant and the respondent which was conditional. The plaintiff-respondent being the owner of the property had clearly forsaken his right to compensation and had abandoned a portion of his property with a clear objective that it would be utilised for widening of the road. The obvious intent was that the widening of the road would enhance the utility of the property owned by the respondent. Even if the question of the validity of the agreement in terms of Section 47 of the Punjab Municipal Act is not gone into, yet the fact remains that the Municipal Committee could not take this property which was voluntarily abandoned for a specific purpose, to utilise it for some other purpose of resettling encroachers who had no right on the public land. It would be traversity of justice if the owners of the property voluntarily offer their property for betterment of the public but it is utilised for a purpose of rewarding the encroachers in the garb of development and betterment of the public. It is also established on record from the statement of PW4 Lachhman Singh, Halqa Patwari and Ex.P-5 Aks Shijra the existence of the property of the plaintiff alongside the road. Khasra No.588 and the existence of a road which is 82'6" wide. It was on this road and khasra number where the Khokhas were existing. The respondent had given up his property for the widening of this road but instead of utilising it for the said purpose, as many as thirty shops were constructed thereon to rehabilitate the encroachers operating from Khokhas. Under the Punjab Municipal Act the functions of the Municipal Committee are to built, construct and regulate roads and streets for the benefit of the public but construction of shops on the road which has the result of

obstructing the street can by no stretch of imagination be said to be a public purpose. Besides, if the appellant was not in a position to utilise the area, voluntarily given by the respondent, then in all fairness the land should have been reverted back to the respondent rather than being used for a purpose alien to the agreement and detrimental to the donor.

No substantial question of law is shown to have been arisen in the appeal.

For the foregoing reasons, there is thus no merit in the appeal which is dismissed as such.

13.12.2006

(MAHESH GROVER)
JUDGE

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